No. 180

In the Supreme Court of the United States

October Term, 1939

THE UNITED STATES, PETITIONER

v.

SWIFT & COMPANY ET AL. AND ARMOUR & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 150

THE UNITED STATES, PETITIONER

v.

STONE & DOWNER CO. AND LOWE, DONALD & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the Board of General Appraisers in a prior case presenting the same questions are found at pages 365 to 396 of the record. The Board's decision in this case is at pages 397 to 400 of the record. (T. D. 40368, G. A. 8842, 46 T. D. 142.) The opinion of the Court of Customs Appeals in the prior case is at page 409 of the record and is reported in 12 Ct. Cust. Appls. 62. The opinion in this case (R. 402) is reported in 12 Ct. Cust. Appls. 557.

JURISDICTION

The judgment of the Court of Customs Appeals was entered March 23, 1925. (R. 407.) Petition for certiorari was filed June 20, 1925, and granted October 12, 1925. (R. 408.) As there are about five thousand cases in the U. S. Customs Court involving the same question, on December 23, 1924, prior to the decision of the Court of Customs Appeals, the Attorney General filed in that court a certificate of importance. (R. 401.) Jurisdiction of this Court is found in Section 195 of the Judicial Code as amended August 22, 1914 (c. 267, 38 Stat. 703), which authorizes certiorari to review decisions of the Court of Customs Appeals if "a certificate to the effect that the case is of such importance as to render expedient its review by the Supreme Court" has been filed by the Attorney General. This statute was not affected by the Act of February 13, 1925.

THE QUESTION PRESENTED

The main question presented is whether the importations of wool, which, it has not been disputed, are commonly and chiefly used in the fabrication of clothing, were properly classified and assessed for duty by the collector of customs under the provisions of paragraph 18 of the Emergency Tariff Act, *infra*, as:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools.

If the wool was properly classified under said paragraph 18 of the Emergency Tariff Act, it automatically follows that the yarn and cloth were subject to the additional duty provided in paragraph 19 of said act.

THE STATUTES INVOLVED

Paragraph 18 of the Emergency Tariff Act of May 27, 1921 (c. 14, 42 Stat. 9, 10), under which the wool was classified for duty:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools: Unwashed, 15 cents per pound; washed, 30 cents per pound; scoured, 45 cents per pound. Unwashed wools shall be considered such as shall have been shorn from the animal without any cleaning; washed wools shall be considered such as have been washed with water only on the animal's back or on the skin; wools washed in any other manner than on the animal's back or on the skin shall be considered as scoured wool. On wool and hair provided for in this paragraph, which is sorted or increased in value by the rejection of any part of the original fleece, the duty shall be twice the duty to which it would otherwise be subject, but not more than 45 cents per pound.

Paragraph 650 of the Tariff Act of October 3, 1913 (c. 16, 38 Stat. 114, 164), under which the court held the merchandise was entitled to free entry:

> Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by schedule K of the existing law shall remain in full force and effect.

Paragraph 19 of the Emergency Tariff Act (42 Stat. 10), under which the additional duty was levied upon the wool yarn and wool cloth:

> Wool and hair of the kind provided for in paragraph 18, when advanced in any manner or by any process of manufacture beyond the washed or scoured condition, and manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value, 45 cents per pound in addition to the rates of duty imposed thereon by existing law.

SPECIFICATION OF ERRORS

(1) The Court of Customs Appeals erred in holding that wool which is commonly and chiefly used in the manufacture of clothing is not "wool, commonly known as clothing wool," and disregarded numerous decisions of that court and of this Court in declining to give due force and effect to the history of the times and various matters of judicial notice surrounding the enactment of the Emergency Tariff Act.

(2) It disregarded rules of construction common to the interpretation of statutory law heretofore adopted and followed.

(3) It improperly applied testimony as to the *commercial* meaning of the term "clothing wool" to establish its common meaning, and failed to give due force and effect to the testimony introduced on behalf of the Government in aid of the common meaning of the term "clothing wool."

STATEMENT

Certain importations of wool, wool yarn, and wool cloth were entered at the port of Boston during the period from November 10, 1921, to July 3, 1922, and the collector of customs at that port levied duties thereon under the provisions of the Tariff Act of October 3, 1913 (c. 16, 38 Stat. 114), as amended by the provisions of the Emergency Tariff Act of May 27, 1921 (c. 14, 42 Stat. 9).

More specifically, the wool, consisting of Australian, New Zealand, and South American wool, of merino blood, was classified and duty assessed thereon at the appropriate rate provided in paragraph 18 of the Emergency Tariff Act for:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools * * *.

The wool yarn and wool cloth were classified and assessed for duty under the specific provisions

therefor in the Tariff Act of 1913, *supra*, and in addition thereto duty was levied at the rate provided in paragraph 19 of the Emergency Tariff Act on "manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value."

The importers, respondents, protested the action of the collector of customs pursuant to the provisions of paragraph N of section III of the Tariff Act of October 3, 1913 (38 Stat. 114, 187), claiming that the wool was entitled to exemption from duty under paragraph 650 of the Act of 1913 (38 Stat. 164), and that the yarn and cloth were not subject to the additional duty provided in paragraph 19 of said Emergency Tariff Act.

The Board of United States General Appraisers sustained the protests of respondents (R. 401), and on appeal to the Court of Customs Appeals the judgment of the Board of General Appraisers was affirmed (R. 407).

While the record in the case is voluminous, briefly stated it comprises a great deal of testimony introduced on behalf of respondents tending to show that the term clothing wool has a restricted meaning in the trade and commerce of the United States; that among certain classes of dealers in wool the term clothing wool is limited to short-fibered wool which is carded and used in the manufacture of woolens, whereas the term combing wool, in its technical trade sense, is applied to long-

fibered wool such as those in question, which are not only carded but combed and used in the worsted process of manufacture.

This testimony was introduced over objection of counsel for the Government who contend that inasmuch as paragraph 18 provides for wools *commonly* known as clothing wool, Congress was addressing itself to the common rather than the commercial meaning of the phrase used. The Government on the other hand introduced the testimony of many witnesses comprising wool growers and dealers in wool to show that in the common acceptation of the words "wool, commonly known as clothing wool," the importations in question clearly fail within that classification. The record further discloses that in the development of machinery employed for the manipulation of wool it is profitable in these days to comb wools of a fiber which formerly was too short for practical combing purposes; that there is no definite line of demarcation between combing and noncombing wools for the reason that whereas some mills are equipped for combing long-fibered wools only, others, equipped with more modern machinery, utilize for combing purposes short-fibered wools. Furthermore, it is shown that the production of carpet wool in the United States is negligible.

ARGUMENT

I

THE COURT OF CUSTOMS APPEALS ERRED IN HOLDING THAT WOOL WHICH IS COMMONLY AND CHIEFLY USED IN THE MANUFACTURE OF CLOTHING IS NOT "WOOL, COMMONLY KNOWN AS CLOTHING WOOL" AND DISREGARDED NUMEROUS DECISIONS OF THAT COURT AND OF THIS COURT IN DECLINING TO GIVE DUE FORCE AND EFFECT TO THE HISTORY OF THE TIMES AND VARIOUS MATTERS OF JUDICIAL NOTICE SURROUNDING THE ENACTMENT OF THE EMERGENCY TARIFF ACT

The context of paragraph 18 would seem to clearly indicate the intention of Congress to transfer from the free list of the Act of 1913 all wool except carpet wool which is the only wool expressly excluded from the terms of paragraph 18. The reason for excluding carpet wool is obviously due to the fact that the United States does not produce carpet wool to any extent and importations of it would not compete with a domestic product. Consequently the purpose of protection was accomplished by providing for the dutiable classification of "wool, commonly known as clothing wool," including hair of the camel, angora goat, and alpaca, importations of which would seriously compete with the domestic product.

If, however, upon examining the context, any doubt should survive as to the intent of Congress expressed in paragraph 18, that doubt is resolved by resort to appropriate extraneous aids.

The title of the Emergency Tariff Act of May 27, 1921 (42 Stat. 9) reads:

> An Act Imposing temporary duties upon certain agricultural products *to meet present emergencies*, and to provide revenue; to regulate commerce with foreign countries; to prevent dumping of foreign merchandise on the markets of the United States; to regulate the value of foreign money; and for other purposes. (Italics ours.)

The title of the Act expressly states that emergencies existed with respect to certain agricultural products, which invited legislation by Congress. It would seem of paramount importance, therefore, to ascertain first the evil which existed, the cause, and the remedy.

Inquiry through appropriate sources of information will readily clarify the situation. The reports of Congressional committees, statements of chairmen of such committees, and other facts of which judicial notice may be taken, clearly disclose the intent of Congress in its enactment of paragraphs 18 and 19 of the Emergency Act, *supra*. While it is a general rule of construction that the language of a statute should be construed by reference to the words employed in the context, it is equally well recognized that where the context does not afford sufficient light as to the intent of Congress, then resort may be had to extraneous aids in the process of interpretation.

United States v. *St. Paul M. & M. Ry. Co.*, 247 U. S. 310, 318, and cases cited.

Carroll v. *United States*, 267 U. S. 132.

United States v. *Pfitsch*, 256 U. S. 547, 551.

Lambert v. *Yellowley*, No. 47, October Term, 1926, decided by this Court November 29, 1926, not yet reported.

It is obvious that respondents regarded the terms of paragraph 18 as ambiguous inasmuch as they found it desirable to introduce a mass of testimony for the purpose of establishing a restricted meaning of the term clothing wool in the trade and commerce of the United States tending to show that the meaning of the phrase "wool, commonly known as clothing wool," as used in the Emergency Act, was different from the meaning ascribed to it by witnesses who testified on behalf of the Government.

The Court of Customs Appeals reviewed the testimony in the case, consulted various authorities, and then reached the conclusion that paragraph 18 was not ambiguous. Of course, it rests with the court to determine whether a statute be ambiguous, but it would seem that its ambiguity should be apparent upon its face rather than result from a determination of that question after a review of the evidence and authorities which may be invoked.

It is an element of statutory construction that the intent of the law is the law, and in applying the various rules of construction that rule should be adopted as the master rule which will not result in absurdities or ascribe to Congress an intent not in

harmony with the purpose of the statute, which in this case was specifically designed "to meet present emergencies affecting agricultural products."

Therefore it becomes profitable and expedient to briefly trace the history of the Emergency Tariff Act under consideration.

It will be recalled that under the Tariff Act of 1913, which was amended by the Emergency Tariff Act, wool of the sheep, hair of the camel, "and other like animals," and all wools and hair on the skin of such animals, were granted freedom from duty. (Par. 650, Act of 1913, 38 Stat. 164.)

In the light of those facts, what was the object, purpose, or intent of Congress in framing paragraphs 18 and 19 of the Emergency Tariff Act and carving out of the free list "wool, commonly known as clothing wool," and expressly excepting only "wools, commonly known as carpet wools"? Reference to Congressional records and documents which disclose the history of the times immediately prior to the enactment of the Emergency Act give a complete answer to this question.

Following the close of the World War in the fall of 1918, there was a surplus of the world's stock of raw wool, and in 1920 there seems to have been a general decline in wool prices—financial stringency, industrial stagnation, and unemployment being contributing causes. Fully recognizing the principle that agriculture is the fundamental basis of prosperity in this country, Congress, in order to avoid the possible destruction of industries requir-

ing years to develop and to avert serious financial difficulties then impending, resorted to an emergency tariff as a temporary means of relief to agricultural interests pending the enactment of a permanent bill. As a result the Emergency Tariff Act was placed upon the statute books May 27, 1921. In reporting the bill (H. R. 2435) to the House of Representatives, Mr. Young, of the Committee on Ways and Means, submitted a report, from which we quote the following (H. Report No. 1, p. 2, 67th Cong., 1st sess.):

> One of the most serious obstacles to the revival of industry is the paralysis of agriculture. Title I of this bill, to protect certain farm products, is submitted to Congress for the welfare of the nation as a whole. It is not sectional. It is not for the benefit of one class, because its passage will be for the good of all. The purchasing power of *farmers* has been in large part destroyed and must be restored before good times can be hoped for.
>
> While it is true that we are in the grip of a nation-wide industrial and business depression, which has distressed many, impartial observers are of the opinion that agriculture is the hardest hit of all. In addition to abnormally low prices, and in some instances no price at all, practically everything the *farmers* buy is from 50 to 100 per cent higher than pre-war levels.
>
> The consuming public and the commercial public have an absolute and definite interest

with the *farmer* in helping him to make cost of production and a fair profit.

The primary interest of the consuming public in the *farmer* is that he keep on producing food. The *farmer* will do that only if he makes a profit on his productions. If he must sell his commodities below cost of production he must go out of business or lower his standard of living to such an extent that he is a public menace. In either event the consuming public will suffer.

At page 5 the report reads in part as follows:

The prosperity of this country is based primarily on agriculture. If the American public permits class after class of American *farmers* to be driven out of their industries by competition from one source or another, the whole country will be impoverished gradually but surely. The *farmer* will not be the only sufferer; the whole public will go down with him. This is the teaching of history.

The sooner the average man realizes that his interest is absolutely inseparable from that of the agricultural producer, the sooner will the entire country be on a more prosperous footing. (Italics ours.)

With specific reference to the subject of wool, we quote as follows from pages 7 and 8 of said report:

(1) In previous years the average production of wool in the United States was 314,000,000 pounds and average imports 203,000,000 pounds.

During the war imports increased in response to increased manufacturing to about 445,893,000 pounds in 1919, and declined to 259,618,000 pounds in 1920.

(2) Both importation and consumption of wool have decreased since May. However, there has been a large increase for January and February, 1921. Importations in recent months appear to be speculative, in anticipation of tariffs.

(3) The stocks of wool on hand were large when the price slump came last May. To the stocks on hand was added the new clip of 280,000,000 pounds.

(4) The accompanying tables show the wool supply in sight to be near 1,000,000,000 pounds. The normal consumption is about 600,000,000 pounds, with about 400,000,000 pounds carried as stock. A year's supply is in sight at normal consumption. At the present rate of consumption (about two-thirds normal) the supply would be sufficient for a year and a half.

(5) The effect of an embargo or high tariff would be to gradually increase the prices.

The justification for an emergency tariff is:

(a) A fundamental industry that it takes years to develop is facing ruin.

(b) The prosperity of large numbers of people, not sheep growers, is dependent on the sheep industry. Hence, merchants and bankers who have made large advances to

sheep producers are in serious financial trouble and favor a wool tariff.

(c) At present the supply of wool in the United States is approximately 650,000,000 pounds, of which 175,000,000 pounds is held by the producers. With the coming 1921 wool clip the amounts controlled by producers would be approximately 450,000,000 pounds while the dealers would hold approximately 500,000,000 pounds. Therefore, the benefit derived from a tariff would be equally divided between producers and the dealers and manufacturers. Undoubtedly any tariff on wool would reflect in the price of finished goods and the charge passed on to the consumer.

(d) Wool dealers who purchased wool stocks at higher prices than now obtain are in serious financial straits and would be directly benefited. Forced liquidation on the part of wool dealers would make the present bad situation worse and break a trade organization of value to agriculture.

(e) It can be shown that the price of wool is so small a factor in the ultimate cost of manufactured goods that no large burden need be placed on the consuming public. (Italics ours.)

The foregoing remarks quoted from the report which accompanied the Emergency Tariff Bill when it was committed to the Committee of the Whole House on April 13, 1921, present a very clear picture of the distressing commercial, finan-

cial, industrial, and economic conditions which prevailed at that time, with special reference to the "sheep industry," and, as indicated, the Emergency Act was enacted as a temporary measure to relieve that situation. This report, in so far as it related to wool and certain other articles, was adopted without change by the Senate Finance Committee in reporting the bill to the Senate. (Senate Report No. 16, 67th Cong., 1st sess.)

At the time the above report was submitted all wool was on the free list. Not only had vast stocks of wool accumulated in this country, as shown by the report, but the 1921 domestic wool clip was in anticipation as well as tremendous shipments from foreign countries. Congress therefore appreciated the necessity of immediate legislative action to forestall serious embarrassment to wool growers and dealers in this country, as shown to exist in Mr. Young's report. Accordingly the Emergency Tariff Act was enacted prescribing rates of duty on "wool, commonly known as clothing wool," the only specific exemption being "such wools as are commonly known as carpet wools." This was urgent in order to avert forced liquidations, as it appears from the report that in many cases merchants and bankers who had made large commitments to sheep producers were in serious financial trouble and favored a wool tariff to preserve the sheep industry from destruction. As the United States is not a carpet-wool producing country, it naturally and obviously

follows that the acute situation confronting merchants and bankers was created through loans on stocks of wool other than carpet wool. To relieve this situation Congress immediately enacted remedial legislation, as expressed in paragraph 18 of the Emergency Tariff Act. It would be absurd to contend, therefore, that the intent of Congress was not to protect all domestic wool producers, and that intent was clearly expressed in the report which accompanied the Emergency Tariff Bill. If the importers' contention were upheld, the very purpose of the legislation would be defeated, as it would result in leaving a large body of domestic producers of long staple wool unprotected.

From the foregoing it is obvious that Congress deliberately intended to prescribe a protective rate of duty upon all wool, and hair of the camel, angora goat, and alpaca (except carpet wool and certain skin wools), which latter are not classifiable as wools. (*United States* v. *Davies Co.*, 11 Ct. Cust. Appls. 392, 396.) Consequently, we find in paragraph 18 of the Emergency Act that Congress has apparently divided wools into two classes, namely, *clothing wools* and *carpet wools*, specifying that the former shall be classified at 15 cents or 30 cents or 45 cents per pound, according to condition, while carpet wools should still remain on the free list.

It will be recalled that the original emergency tariff bill, H. R. 15275, which was passed by the House and Senate, was vetoed by President Wilson a few days before the end of the 66th Congress; and

as the expression "wool, commonly known as clothing wool" appearing in paragraph 18 of the Emergency Tariff Act (H. R. 2435) of May 27, 1921, is in language identical to the corresponding provision in the original emergency bill, it is profitable to consider the debates and antecedent history of the original bill as well as the one which was finally enacted into law.

An examination of the Congressional Record, together with the committee report above quoted, wherein the progress of the emergency bill in its various stages in the House and Senate is shown, clearly indicates that Congress was legislating with respect to two grand divisions of wool, namely, clothing wool and carpet wool, which terms collectively embraced all wools. Consequently the term clothing wool, as employed in paragraph 18, was designed to include the wool in question. References to the Congressional Record and other documents, are contained in the Appendix to this brief, page 30.

II

THE COURT OF CUSTOMS APPEALS DISREGARDED RULES OF CONSTRUCTION COMMON TO THE INTERPRETATION OF STATUTORY LAW HERETOFORE ADOPTED AND FOLLOWED

Under Point I we have endeavored to present the situation which existed at the time of the enactment of the Emergency Tariff Act and have referred to the debates in Congress and the reports on which the legislation was based, which clearly show

the emergency existing in the wool industry, and which the Emergency Tariff Act was intended to relieve.

All of this documentary proof appears to have been rejected by the court as an aid to its interpretation of the language of the paragraph here in question, contrary both to the decisions of the United States Court of Customs Appeals and also to the decisions of this Court.

The reports of the United States Court of Customs Appeals are replete with cases in which apparently it has been largely, if not in fact expressly, guided by its references to the Congressional Record, Tariff Hearings, Notes on Tariff Revision, etc., in reaching its conclusions, notably:

Tilge v. *United States*, 2 Ct. Cust. Appls. 129.

United States v. *Anderson*, 2 Ct. Cust. Appls. 350, 352, 353.

Rosenberg v. *United States*, 7 Ct. Cust. Appls. 213.

Heide v. *United States*, 2 Ct. Cust. Appls. 399, 402, 403.

United States v. *Wakem*, 2 Ct. Cust. Appls. 411, 419.

American Express Co. v. *United States*, 3 Ct. Cust. Appls. 475, 478.

Willenborg v. *United States*, 6 Ct. Cust. Appls. 451, 454, 455.

Wright & Graham Co. v. *United States*, 6 Ct. Cust. Appls. 528, 529, 530, 531.

Note also *Shallus* v. *United States*, 162 Fed. 653, 655, 656.

These aids to the interpretation of statutes have been recognized by this Court in numerous cases.

United States v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318, and cases cited.

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

Carroll v. *United States*, 267 U. S. 132.

Lambert v. *Yellowley*, No. 47, October term, 1926, Supreme Court of the United States, not yet reported.

In the recent and important cases considered by this Court on the validity of the Emergency Housing Laws of the State of New York and the District of Columbia, the situation which confronted the legislature at the time of the enactment of those laws was thoroughly considered by this Court in its determination as to the constitutionality of the measures there involved, and held "*that the emergency declared by the statute did exist must be assumed* * * *." (Italics ours.) *Block* v. *Hirsh*, 256 U. S. 135, 154.

See also:

Marcus Brown Co. v. *Feldman*, 256 U. S. 170.

Levy Leasing Co. v. *Siegel*, 258 U. S. 242.

A disregard, by the court below, of the rules of construction applied in these cases is of vital importance in this case as the lower court based its opinion (R. 402) on the fact that the statute sought to be interpreted was free from ambiguity, and that extraneous aids such as the official reports above referred to, could not be permitted to override the

plain and unambiguous meaning of the words as used in the Act. Its failure to give due consideration to these official documents resulted in their giving an interpretation to the Emergency Tariff Act which did not carry out the intention of Congress at the time it was enacted into law, in that it excluded from its protection a class of wool which it was conceded was produced in large quantities in this country at the time of its enactment. In other words, the court below failed to give due consideration to the emergency which it must be assumed existed.

III

THE COURT BELOW ERRED IN THAT IT APPLIED TESTIMONY AS TO THE COMMERCIAL MEANING OF THE TERM CLOTHING WOOL TO ESTABLISH ITS COMMON MEANING, AND FAILED TO GIVE DUE FORCE AND EFFECT TO THE TESTIMONY INTRODUCED ON BEHALF OF THE GOVERNMENT IN AID OF THE COMMON MEANING OF THE TERM "CLOTHING WOOL"

While the Government was opposed to the introduction of the oral testimony introduced by respondents to establish a restricted trade meaning of the term clothing wool upon the ground that the context of paragraph 18 was apparent, when read in the light of matters of public history surrounding the Emergency Tariff Act, of which judicial notice could be taken, it nevertheless felt impelled to rebut such oral testimony with other testimony tending to establish a broader and more popular

meaning of the term clothing wool which would include the wool in question, and more completely effectuate the policy of Congress declared in the Emergency Act. Marvel as 4 U. S. 116 & U. S. 11

Furthermore, as stated by this Court in *Robertson* v. *Salomon*, 130 U. S. 412, at page 415:

> But if the commercial designation fails to give an article its proper place in the classifications of the law, then resort must necessarily be had to the common designation.

The court below, in its opinion (R. 402) apparently took the position that the words "commonly known as clothing wool" in paragraph 18 of the Emergency Tariff Act, are free from ambiguity and should be given their ordinary meaning, without giving due force to the history of the wool schedules and the circumstances surrounding the passage of the Emergency Act.

It is not disputed that wool merchants in sorting and grading fleeces separate them into grades according to length of fiber, the short-fibered wools being carded for use in the woolen system, and the long-fibered wools being both carded and combed for use in the worsted system. These grades are commercially known as combing and clothing, respectively. Nevertheless they are in fact and in truth both clothing wools, it being conceded that they are chiefly used in the manufacture of clothing.

It is significant, as shown by the record in this case, that the importations in question consist of Australian, New Zealand, and South American

wool of merino blood. All of these wools were enumerated in the Tariff Acts from March 2, 1867, to 1921 (whenever wool was a dutiable commodity), and specifically designated either as "Class I," or as in the Tariff Acts of 1867 and 1883, as "Class I, Clothing."

For convenience, the pertinent provision of the Tariff Act of 1867 (c. 197, 14 Stat. 559) is here set forth.

CLASS 1. CLOTHING WOOL

> That is to say, merino, mestiza, metz, or metis wools, or other wools of merino blood, immediate or remote; down clothing wools, and wools of like character with any of the preceding, including such as have been heretofore usually imported into the United States from Buenos Ayres, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada, and elsewhere, and also including all wools not hereinafter described or designated in classes two and three.

The Tariff Act of March 3, 1883 (c. 121, 22 Stat. 488, 508), is in identical language.

Consequently, such wools as are here under consideration had acquired a well-known designation as "clothing wools" based on blood distinction rather than on length of staple. The apparent reason why such wools have also come to be technically known as combing wools is because of the great development in the manufacture of combing

And at page 448 the following statement appears:

> The distinction between "clothing" and "combing" wools largely lost its significance about 50 years ago with the invention of machines which could be used to comb fine Merino wool of about 2½ inches in length, making it available for use in the manufacture of worsted yarns. The term "carpet" wools also became something of a misnomer with the increasing use of the better sorts of wool from "native" Asiatic and other unimproved sheep for mixing with the higher grades of wool in making yarns to be used for purposes other than carpet manufacture. Furthermore, where low cross-bred wool is cheap it is utilized to some extent for this purpose. With the passing of these distinctions the division under Schedule K became, in 1890, merely "Class I," "Class II," and "Class III," instead of "Class I, Clothing Wool," "Class II, Combing Wool," and "Class III, Carpet Wool." *In Class I remained, however, all wool from sheep having a trace of Merino blood.* In Class II was placed all wool from sheep of the English breeds, and in Class III the great variety of wools from "native" sheep of Russia, Asia, and other parts of the world. This was the classification in the tariff acts, with the exception of the act of 1894, until wool was placed on the free list in 1913. (Italics ours.)

See also Report of the Tariff Commission on "The Wool Growing Industry," 1921, pages 25, 26.

The foregoing references are in harmony with the evidence of Government witnesses who testified that the common meaning of the term clothing wool was much broader than its restricted trade or commercial meaning and included all wools used generally in the manufacture of clothing. The fact that the hair of the camel, angora goat, and alpaca, which as shown by the record are long-staple products and usually combed in preparation for their ultimate use, are included in the class of wool commonly known as clothing wool, is most significant.

It is submitted, therefore, that the foregoing considerations lead irresistibly to the conclusion that it was the intent of Congress in paragraph 18 of the Emergency Tariff Act to provide a dutiable classification for all wool except carpet wool. Hence, even if it were established that the term "clothing wool" had a restricted or commercial trade meaning it will not prevail if Congress has manifested a contrary intention.

> *Cadwalader* v. *Zeh*, 151 U. S. 171.
>
> *Roosevelt* v. *Maxwell*, 20 Fed. Cas. 1155.
>
> *Hahn* v. *United States*, 131 Fed. 1000, affirmed without opinion, 135 Fed. 349.
>
> It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with

the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail. (*Ozawa* v. *United States*, 260 U. S. 178, 194.)

See also *United States* v. *Thind*, 261 U. S. 204, 209.

IV

THE QUESTIONS ARE NOT RES ADJUDICATA

The doctrine of *res adjudicata* has no application to the case at bar. It is a universal rule, long established in customs procedure, that each and every importation may become the subject of an independent action, and the rights of the parties in each instance become the subject of independent consideration and judgment by the courts.

Stone & Downer Co. et al. v. *United States*, 4 Ct. Cust. Appls. 47.

Beuttell & Sons v. *United States*, 8 Ct. Cust. Appls. 409, 410, 411, 421.

United States v. *Rice & Fielding, Inc.*, T. D. 40979, 47 Treas. Dec. 807, at 808.

United States v. *Hurst & Co.*, T. D. 41584, 49 Treas. Dec. 853, 854.

Rule XXII of the Board of United States General Appraisers, T. D. 34210, 26 Treas. Dec. 316, 324, and T. D. 37772, 35 Treas. Dec. 106, at 113.

CONCLUSION

The judgment of the United States Court of Customs Appeals should be reversed.

Respectfully submitted.

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JANUARY, 1927.

APPENDIX

The following references to the Congressional Record are here set forth:

Remarks in House on Bill H. R. 15275, imposing duties on certain agricultural products—Original Emergency Bill, vetoed by President Wilson (references are to the Congressional Record, vol. 60, 66th Cong., 3d sess.): Pages 594, 618 (the bill), 625 (Kinkaid), 631 (Blanton), 638 (Green), 642 (Quin), 648 (Smith, Mich.), 663 (Rainey), 664 (Fordney), 665 (Green), 3488 (Disagreement to Senate Bill), 3973 (Conference Report), 3975 (Conference Report), 3982, 4566, 4573, 4574, 4575, 4576, 4578, 4670, 4702, 4742.

Remarks in Senate, same bill: Pages 736, 738 (Smoot), 743, 1294, 1673, 2005, 2054, 2063 (Harrison), 2104, 2314 (Smoot), 2376 (Harrison), 2378 (Lodge), 3179 (Walsh), 3239, 3242 (Simmons), 3247 (Table of Comparison), 3941, 4023 (Conference Report), 4024, 4034 (Conference Report), 4039 (Reed).

Amendments in Senate: Pages 808, 1086, 1136, 1238, 1294, 1543, 1674, 1727, 2047, 2104.

Conference Report (H. Report 1359): Pages 3824, 4023.

Estimated Receipts Emergency Act: Page 648.

"Comparison of Rates" (Simmons): Page 3247.

The following references also are made to the original Emergency Bill, H. R. 15275, appearing in the Congressional Record, Volume 60, Part I, pages 1 to 1084, 66th Congress, third session.

House: Page 625 (Kinkaid); 627 (Griffin); 631 (Blanton); 638 (Green); 642 (Quin); 648 (Smith); 663 (Rainey); 664 (Fordney); 665 (Olney); 665 (Hudspeth); 665 (Green).

Senate: Page 738 (Smoot); 738 (Harrison); 738 (Reed).

Remarks on final Emergency Bill, H. R. 2435, and comparison of duties between the Emergency Bill and the Payne-Aldrich Bill, Cong. Rec., vol. 61, p. 1289, 67th Cong., 1st sess.:

Conference Report on bill (H. R. 2435) imposing temporary duties on certain merchandise (H. Report 79): Pages 1563, 1578, 1589.

Remarks in House on House Bill (H. R. 2435) imposing temporary duties on certain merchandise: Pages 217, 252 (the bill), 268 (old bill), 272 (Minority Report), 327, 1430, 1632, 1635.

Remarks in Senate (same): Pages 910, 1018, 1066, 1097, 1098, 1122, 1148, 1149, 1172, 1244, 1253, 1288, 8436.

Statistics relative to estimated revenue, Emergency Bill: Page 1068.

Views of Minority: Page 269.

Amendment in Senate, Tariff on Wool: Page 1165.

Remarks in Senate on bill (H. R. 8643) to extend Emergency Tariff Act: Page 7538.

Statistical History of Tariff Acts from 1870 to 1920: Page 8421.

Statistics: Pages 1789, 3844.

Text of Booklet "Tariff Information, 1921": Page 3849.

Text of Emergency Act: Page 7544.

Note also the following publications:

"The Wool Growing Industry," prepared by the United States Tariff Commission, 1921, page 428.

The Report of the Tariff Board on Schedule K of the Tariff Law on "Wool and Manufactures of Wool," Vol. 1, part 1, page 53, 1921. Also Vol. 2, part 2, pages 299, 382, 413.

Summary of Tariff Information, 1921, page 952.

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Statistical Bulletin No 3 U. S. Dept of Agriculture and Statistical Abstract of the U. S. Dept of Commerce, re import duties, production and consumption of wool, years 1918-19